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Morris I. Leibman, Chairman

Intelligence Identities Protection Act

In our previous issues we have reported extensively on the Intelligence Identities Protection Act—S. 391 and H.R. 4. The measure has resulted in a lively debate within the legal community. In order to seek clarification on some of the basic criticisms that have been raised, Intelligence Report put some questions to Mr. John S. Warner, for many years general counsel of the Central Intelligence Agency. The questions and his answers to them are printed below.

Q. Why is this type of legislation needed?

A. There are certain groups whose avowed purpose is to destroy the U.S. intelligence effort and as a means to this end they have published lists of names identifying them as CIA agents. They place such people and their families in physical jeopardy and certainly impair and impede U.S. intelligence activities. Legislation presently on the books is not specific enough to deal effectively with this situation. The U.S. Congress has mandated the carrying out of intelligence activities by authorizing and appropriating the necessary funds. Thus, it has a responsibility to take steps to protect the safety of the people concerned and their activities. Passage of this legislation is one such step.

Q. As you are aware, the constitutionality of this legislation has been challenged by the American Civil Liberties Union and by a number of legal scholars. What is your answer to these critics?

A. Three committees of Congress have said the legislation is constitutional. Last year the Senate Intelligence Committee approved and reported such a bill. Also the House Judiciary Committee and the House Intelligence Committee approved and reported such legislation. This happened after full debate and detailed hearings where assertions of unconstitutionality were fully aired.

Q. Is there any precedent in Supreme Court opinions to support the view that the First Amendment is absolute and would prevail over this legislation?

A. Among the advocates of the absolutist view of the First Amendment were those who asserted such views in court and urged that Marchetti and Snepp could not be

held to their secrecy agreements—that the higher law was the First Amendment. The Supreme Court clearly and firmly stated the U.S. government can take steps to protect its intelligence secrets, specifically stating that the First Amendment privilege does not prevail in all circumstances. In the Agee case, just decided (see elsewhere in this Report), it seems to me the Supreme Court has laid to rest such absolute views regarding a First Amendment conflict with this legislation.

Q. It has been said that legislation should not attempt to penalize publication of agent identities which are already in the public domain and have, in fact, been put there by the U.S. government. There have been a number of references, for example, to the fact that careful study of the State Department Biographic Register will in most cases reveal to informed persons the identity of CIA agents using State Department cover. Is it accurate that the government itself frequently puts the identity of intelligence agents into the public domain?

A. No, it is not—such assertions are not true. Agent identities are not routinely put in the public domain. It is

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Case Note—*Haig v. Agee*

Germane to *Intelligence Report's* coverage of the Intelligence Identities Protection Act now pending before the House Intelligence Committee and the Senate Judiciary Committee, is the recent (June 29, 1981) Supreme Court case of *Haig v. Agee*. This decision held that Agee's passport could be revoked because of the serious damage he had caused or was likely to cause to national security and/or foreign policy.

Reviewing the background, the majority finding noted that in 1974 Agee, who had been employed by the CIA from 1957 to 1968—

"Called a press conference in London to announce his 'campaign to fight the United States CIA wherever it is operating.' He declared his intent 'to expose CIA officers and agents and to take the measures necessary to drive them out of the countries where they are operating.' Since 1974, Agee has, by his own assertion, devoted consistent effort to that program, and he has traveled

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